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U.S. Citizenship and Immigration Services

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MAR 29 2004

FILE: [redacted] Office: CHICAGO, ILLINOIS Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is the beneficiary of an approved Petition for Alien Relative as the spouse of a U.S. citizen. He now seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may remain in the United States and reside with his U.S. citizen spouse and child.

The Interim District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon his spouse or child. The application was denied accordingly. *See Interim District Director's Decision* dated May 15, 2003.

On appeal, counsel asserts that Citizenship and Immigration Services, (CIS) misapplied the extreme hardship standard set forth in section 212(h) of the Act, and that the evidence in the record establishes extreme hardship to the applicant's qualifying relatives.

Section 212(a)(2) of the Act states in pertinent part, that:

> (A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
>
> > (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.
> >
> > . . . .

Section 212(h) of the Act provides, in pertinent part, that:

> (h) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -
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> . . . .
>
> > (1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .

The record reflects that on May 3, 1995 in Cook County, Illinois the applicant was convicted of Possession of a Stolen Vehicle/False V.I.N., a Class 2 Felony in violation of ILCS 625 5/§4-103, and sentenced to eighteen months probation. The applicant is inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act, due to his conviction of a crime involving moral turpitude (possession of stolen property).

Section 212(h) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be

considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

In the present case, the applicant must demonstrate extreme hardship to his U.S. citizen spouse or child.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the BIA deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

On appeal, counsel asserts that CIS failed to correctly assess extreme hardship to the applicant's spouse (Ms. [redacted]. In support of this assertion, counsel submits a brief and other supporting documentation. In the brief counsel states that Ms. [redacted] mother relies upon her for all her needs due to her medical condition. Furthermore counsel states that Ms. [redacted] would not be able to relocate to Mexico in order to join her husband due to her mother's medical condition. Counsel also states that Ms [redacted] relies on her husband for emotional and financial support and would suffer extreme hardship if her spouse were not permitted to reside in the United States. Though there is documentation indicating that Ms. [redacted] mother has diabetes, there is no independent corroboration to show that Ms. [redacted] mother's medical condition will be jeopardized if Ms. [redacted] decides to relocate to Mexico with the applicant. In any event, hardship to Ms. [redacted] mother is not a consideration in these proceedings.

In the brief counsel states that if Ms [redacted] is forced to leave the United States and relocate with her spouse and child in Mexico, her child would suffer extreme hardship due to the lack of adequate educational opportunities and his future relationship with his parents and grandparents. In the present case the record reflects that Ms. Tapia is a native of Mexico and that she met and married her husband in Mexico. No reason was provided, other than her mother's condition and the opportunity for educational opportunities in the United States for the applicant's child as to why Ms. Tapia and her child would not be able to return to Mexico.

There are no laws that require Ms. Tapia and her child to leave the United States and live abroad. In *Silverman v. Rogers*, 437 F. 2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States." The uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. *See Shooshtary v. INS,* 39 F. 3d 1049 (9th Cir. 1994).

Additionally, in the brief counsel asserts that CIS failed to correctly assess the financial hardship to the applicant's spouse and child. Counsel states that CIS erred in stating that Ms. Tapia's income exceeds the poverty guidelines for a family of two; that Ms. Tapia's income should reflect a family of three because she supports her husband, their child and herself. In a previous letter submitted to CIS, counsel stated that the

applicant was the main financial provider to the family, that he and his spouse had bought a house, and that both incomes were needed in order to meet the payments of the all the bills.

The assertion of financial hardship to the applicant's spouse is contradicted by the fact that, pursuant to § 213A of the Act, 8 U.S.C. § 1183a, and the regulations at 8 C.F.R. § 213a, the person who files an application for an immigration visa or for adjustment of status on or after December 19, 1997 must execute a Form I-864 (Affidavit of Support) which is legally enforceable in behalf of a beneficiary (the applicant) who is an immediate relative or a family–sponsored immigrant when an applicant applies for an immigrant visa. The statute and the regulations do not provide for an alien beneficiary to execute an affidavit of support on behalf of a U.S. citizen or resident alien petitioner. Therefore, a claim that an alien beneficiary is needed for the purpose of supporting a citizen or resident alien petitioner can only be considered as a hardship in rare instances.

No evidence has been provided to substantiate that her husband's financial contribution is critical to Ms. Tapia's or her child's lifestyle or well-being. Even taking in account the poverty guidelines for a family of three, Ms. Tapia's 2001 Federal taxes indicate that she earned a salary above the poverty guidelines for a family of three.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the all the factors presented, and the aggregated effect of those factors, indicates that the applicant's family members would suffer hardship due to separation. The applicant has failed, however, to show that his qualifying relatives would suffer extreme hardship over and above the normal social and economic disruptions involved if the applicant was not permitted to remain in the United States at this time. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.